

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	Judge Patti B. Saris
)	Chief Magistrate Judge Marianne B. Bowler
)	
)	

**B. BRAUN MEDICAL INC.'S MOTION FOR LEAVE TO FILE A REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER
STAYING DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS**

Pursuant to Local Rule 7.1(b)(3), B. Braun Medical Inc. ("BBM") moves for leave to file the accompanying Reply Memorandum to plaintiffs' opposition to BBM's Motion for a Protective Order Staying Discovery Pending Resolution of its Motion to Dismiss.

Plaintiffs filed a memorandum in opposition to BBM's motion on June 6, 2005. In that opposition, plaintiffs misstate the law governing adjudication of BBM's motion, the content of the Court's prior Case Management Orders, and the facts giving rise to BBM's motion. Further, plaintiffs inexplicably assert that they would be prejudiced if denied immediate discovery "necessary for establishing," Pls.' Opp. at 7, claims that the plaintiffs "do not dispute" should be dismissed with regard to BBM. (*See* Pls.' Opp. Br. to BBM Mot. to Dismiss SAMCC, at 1 & n. 1.)

BBM now seeks leave to file the accompanying Reply Memorandum in support of its Motion for a Protective Order Staying Discovery Pending Resolution of its Motion to Dismiss in order to correct plaintiffs' mischaracterizations of the law and the record in this case. In addition, this Reply Memorandum is intended to help frame the issues remaining for the Court's resolution and to better inform the Court of the parties' respective positions.

Counsel for BBM contacted plaintiffs to seek their consent to the filing of this Reply Memorandum. Plaintiffs' counsel have refused to consent to this motion.

WHEREFORE, B. Braun Medical Inc. respectfully moves that this Honorable Court grant it leave to file its Reply Memorandum in support of its Motion for a Protective Order Staying Discovery Pending Resolution of its Motion to Dismiss.

Dated: June 10, 2005

Respectfully submitted,

/s/ Daniel F. Attridge, P.C.
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Counsel for B. Braun Medical Inc.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for B. Braun Medical Inc. has conferred with counsel for plaintiffs and that plaintiffs do not assent to this motion.

/s/ Daniel F. Attridge, P.C.
Daniel F. Attridge, P.C.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing B. BRAUN MEDICAL INC.'S MOTION FOR LEAVE TO FILE A REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER STAYING DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS, B. BRAUN MEDICAL INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER STAYING DISCOVERY, and PROPOSED ORDER have been served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties on this 10th day of June 2005.

/s/ Daniel F. Attridge, P.C.

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